

106TH CONGRESS
2D SESSION

S. 3185

To end taxpayer support of Federal Government contractors against whom repeated civil judgments or criminal convictions for certain offenses have been entered.

IN THE SENATE OF THE UNITED STATES

OCTOBER 11 (legislative day, SEPTEMBER 22), 2000

Mr. HARKIN introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To end taxpayer support of Federal Government contractors against whom repeated civil judgments or criminal convictions for certain offenses have been entered.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Taxpayer Protection
5 and Contractor Integrity Act”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to end support by the tax-
8 payers of the United States of Federal Government con-
9 tractors that violate the trust of such taxpayers through

1 repeated civil judgments or criminal convictions for certain
2 offenses.

3 **SEC. 3. FINDINGS.**

4 Congress finds the following:

5 (1) Taxpayer dollars should not be used to sup-
6 port individuals or entities who repeatedly violate
7 laws regarding Federal contracting and the trust of
8 taxpayers, thus putting the integrity of future con-
9 tracts at risk.

10 (2) The Federal Acquisition Regulation already
11 requires bidders on Federal contracts to disclose
12 honestly the existence of indictments, charges, con-
13 victions, or civil judgments against such bidders.

14 (3) The Federal Acquisition Regulation also re-
15 quires contracting officers to make a determination
16 regarding the responsibility of a potential contractor
17 prior to awarding a contract to ensure that the po-
18 tential contractor has a satisfactory record of integ-
19 rity and business ethics and a satisfactory perform-
20 ance record.

21 (4) Regardless of the number or seriousness of
22 convictions or civil judgments against a potential
23 contractor, however, the Federal Acquisition Regula-
24 tion provides Federal agencies wide discretion in de-
25 termining whether to initiate suspension or debar-

1 ment procedures. There is currently no maximum
2 number of convictions above which an entity or indi-
3 vidual becomes ineligible for future contract awards.

4 **SEC. 4. EXPANDED DISCLOSURE REQUIREMENTS FOR BID-**
5 **DERS ON FEDERAL CONTRACTS.**

6 A contracting officer for a Federal contract shall re-
7 quire any potential contractor who has disclosed the exist-
8 ence of an indictment, charge, conviction, or civil judg-
9 ment under section 94.409(a) of the Federal Acquisition
10 Regulation (or any successor provision) to submit informa-
11 tion regarding the number of convictions or civil judg-
12 ments entered against the potential contractor, the nature
13 of the offenses, and whether any fines, penalties, or dam-
14 ages were assessed.

15 **SEC. 5. LIMITATION ON AWARD OF FUTURE CONTRACTS.**

16 (a) IN GENERAL.—No Federal contract for the pro-
17 curement of property or services may be awarded to any
18 individual or entity against whom a total of three or more
19 convictions or civil judgments have been entered after the
20 date of the enactment of this Act for any of the following:

21 (1) Commission of fraud or a criminal offense
22 in connection with obtaining, attempting to obtain,
23 of performing a Federal, State, or local government
24 contract or subcontract.

1 (2) Violation of a Federal or State antitrust
2 statute relating to the submission of offers for Fed-
3 eral contracts.

4 (3) Commission of embezzlement, theft, forgery,
5 bribery, falsification or destruction of records, mak-
6 ing false statements, or receiving stolen property in
7 connection with obtaining, attempting to obtain, or
8 performing a Federal, State or local government
9 contract or subcontract.

10 (b) APPLICABILITY.—This section shall apply with
11 respect to a contract awarded on or after the date of the
12 enactment of this Act.

13 (c) LENGTH OF PROHIBITION; REPORT.—The prohi-
14 bition on the award of a contract under this section shall
15 terminate after a period of three years beginning on the
16 date that the most recent conviction or civil judgment has
17 been entered against the potential contractor if—

18 (1) during such three-year period, the potential
19 contractor demonstrates a satisfactory record of eth-
20 ics and integrity by avoiding additional criminal con-
21 victions or civil judgments regarding the offenses de-
22 scribed in subsection (a);

23 (2) the potential contractor submits to the Di-
24 rector of the Office of Management and Budget a
25 report on the steps that have been taken by the po-

1 tential contractor (such as changes in company pol-
2 icy, personnel, or procedures) to prevent future vio-
3 lations; and

4 (3) the Director certifies that the steps taken
5 are satisfactory.

6 (d) **ADDITIONAL OFFENSES.**—If an individual or en-
7 tity who has been prohibited from being awarded a Fed-
8 eral contract under subsection (a) has a conviction or civil
9 judgment for an offense described in subsection (a) en-
10 tered against the individual or entity after the termination
11 of the three-year period described in subsection (c), such
12 individual or entity shall be prohibited from being awarded
13 a Federal contract for an additional three years.

14 **SEC. 6. PRESIDENTIAL WAIVER.**

15 (a) **AUTHORITY.**—The President may waive the ap-
16 plication of section 5 if the President determines that—

17 (1) such a waiver is in the interests of national
18 security; or

19 (2) the need for the property or services to be
20 acquired under the contract is of such an unusual
21 and compelling urgency that the Federal Govern-
22 ment would be seriously injured if the application of
23 such section is not waived.

24 (b) **WAITING PERIOD.**—The President may not exer-
25 cise the waiver authority of this section until 45 days after

1 the date that the President submits to Congress in writing
2 a justification for such waiver.

3 **SEC. 7. PAYMENT OF LEGAL COSTS.**

4 In any case in which the United States brings an ac-
5 tion against an individual or entity for an offense de-
6 scribed in section 5(a) and a verdict of guilty is rendered,
7 the United States shall not be responsible for payment of
8 legal costs of the individual or entity in connection with
9 the action.

10 **SEC. 8. CONTRACTOR DEFINED.**

11 In this Act, the term “contractor” has the meaning
12 given such term in section 9.403 of the Federal Acquisi-
13 tion Regulation, as in effect on the date of the enactment
14 of this Act.

15 **SEC. 9. CONSTRUCTION.**

16 Nothing in this Act shall be construed as superseding
17 the authority of a Federal contracting officer to make a
18 determination of nonresponsibility regarding a potential
19 contractor, or to initiate suspension and debarment proce-
20 dures against an entity or individual against whom three
21 or more convictions or civil judgments for the offenses de-
22 scribed in section 5(a) have not been entered.

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